

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2056 of 1984

Date of decision: 23-8-1996

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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VINODBHAI CHIMANBHAI PATEL

Versus

PANCHAMHALS DISTRICT PANCHAYAT  
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Appearance:

MR KS JHAVERI for Petitioner  
None present for Respondent No. 1, 3  
Mr. Nigam Shukla for Respondent No. 2  
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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 23/08/96

ORAL JUDGEMENT

Challenge is made by the petitioner to the order of the Gujarat Civil Services Tribunal, Gandhinagar, dated 24-1-1984 made in Appeal No.29 of 1982. The facts of the case in brief are as under:

The petitioner was appointed on 30-9-1972 on the

post of Agricultural Assistant on his selection by the Gujarat Panchayat Service Selection Committee and he was allocated to the Panchmahal District Panchayat where he joined on 29th December 1972. Respondent No.2 herein was appointed as Agricultural Assistant in the month of September, 1972 and he was allocated to Sabarkantha District Panchayat where he joined on 15-9-1972. The counsel for the petitioner does not dispute that respondent No.2 was also appointed after selection. The Director of Agriculture, under order dated 7-5-1974, ordered for closure of groundnut scheme. Respondent No.2 was declared surplus by the District Agricultural Officer, Sabarkantha, and he was allocated to Panchmahal District for absorption. Respondent No.2 was absorbed as Gram Sevak in the District Panchayat, Sabarkantha. The absorption was subject to the condition that past service rendered by respondent No.2 was not to be counted for seniority. The petitioner was to be declared surplus from this District Panchayat, but as posts were available he was retained on the post of Talati-cum-Mantri and that order was passed on 10th April, 1974. It is not in dispute that the absorption should have been subject to the condition of foregoing the benefit of past service which was also a condition of absorption of the petitioner. In the case of petitioner the only difference was that he was continued in the same District Panchayat. The counsel for the petitioner does not dispute that the pay-scale of the post of Agricultural Assistant, Gram Sevak and Talati-cum-Mantri was same. The petitioner, under order dated 6-5-1977, was posted as Agricultural Assistant and thereafter under order dated 5-6-1982 his services were ordered to be counted as Agricultural Assistant right from the beginning, i.e. his services as Gram Sevak has also been counted as Agricultural Assistant. On 6-7-1981 the petitioner was promoted as Agricultural Officer. This gave rise to the cause of action to respondent No.2 to challenge the promotion of petitioner before the Tribunal. The Tribunal allowed the application and promotion of the petitioner was declared to be illegal. Hence this special civil application before this Court.

2. Counsel for the petitioner made threefold contentions. Firstly it is contended that the Tribunal had no jurisdiction to entertain the appeal. Second contention was that the appeal was time barred. The last contention raised was that respondent No.2 has not made any grievance against assignment of seniority of petitioner in the cadre of Agricultural Assistant. The Tribunal has held that the petitioner is not entitled to promotion as many other seniors were there. The Tribunal

has set aside the order made in favour of the petitioner, which judgment is questioned in this petition.

3. I have given my thoughtful consideration to the submissions made by the learned counsel for the petitioner. Before the Tribunal it was not in dispute that in the seniority list published showing the position as on 31-3-1974 immediately before declaring all those who were holding the posts of Agricultural Assistants as surplus and appointing them as Gram Sevak, Shri R.K. Koisa was shown at serial No.6; R.Z.Patel at serial No.14 and the petitioner herein at serial No.29. So in the seniority list of Gram Sevak the petitioner was at serial No.29, i.e. he was junior to respondent No.2. On the posts of Talati-cum-Mantri and Gram Sevak the petitioner has been assigned seniority in the said cadre. The petitioner has not disputed the position in the said list of Gram Sevaks, reference to which has been made above. The counsel for the petitioner contended that the channel of promotion is provided to different posts from the post of Gram Sevak and Agricultural Assistant. Things were manipulated to give the petitioner march over his seniors including respondent No.2. He has been taken away from the post of Gram Sevak and was posted as Agricultural Assistant on 9-5-1977. Not only this, the order dated 6-5-1977 posting the petitioner as Agricultural Assistant was modified under order dated 17-6-1977 and the petitioner was ordered to be considered as Agricultural Assistant for all the period. By this order the very purpose of declaring persons as surplus from the post of Agricultural Assistant has been nullified. The petitioner's name has been taken out from the seniority list of Gram Sevaks and his name has been placed in the seniority list of Agricultural Assistants, and the petitioner has been given promotion on the next higher post.

4. Absorption was on condition of forfeiture of the past service. The counsel for the petitioner has made reference to the Government Resolution dated 28-4-1974, particularly to clause (b) thereof which reads that the previous service shall not be counted for seniority of Agricultural Assistants who have to be declared surplus and have to be absorbed on some other post. That condition was equally applicable to the petitioner also because he was taken on other post of Gram Sevak on closure of groundnut scheme. The District Development Officer, by passing the order posting the petitioner as Agricultural Assistant and further granting benefit of his services as continuous on the post of Agricultural Assistant from the date of initial appointment, has acted

contrary to the Government Resolution dated 28th May, 1974. The past services of the petitioner could not have been counted, but it has been done. It has resulted in loss of seniority to his seniors as well as deprivation of promotion to them. It is a clear case of nepotism. In case it was necessary to have a person as agricultural assistant, the District Development Officer should have taken from Gram Sevak or Talati cum mantry on the basis of seniority of surplus employees. The petitioner alone has been chosen though he was at serial No.29 in the seniority list of Gram Sevaks. Many of the seniors were available and it is not the case that those persons declined to join as Agricultural Assistant. In view of these facts the only inference which can be drawn is that the petitioner has been given extra favoritism for which he was otherwise not entitled to. It is a case of favoritism which is clearly borne out from the fact that when he got the benefit many persons senior to him continued on the lower post. The Tribunal has noticed the fact that the petitioner has been appointed as Agricultural Supervisor till selection or appointment of the incumbent to the said is made on receipt of recommendation of the Selection Committee. It was not in dispute before the Tribunal that all the Agricultural Assistants working in the groundnut scheme in Godhra including Shri V.C. Patel (the petitioner herein) were reverted either as Gram Sevak or Talati-cum-Mantri and various orders issued clearly stipulated that their earlier services as agricultural assistant were not to be counted for seniority in the cadre to which they were appointed. The District Development Officer admitted before the Tribunal that the promotion of the petitioner as Agricultural Supervisor was an obvious mistake. The tribunal concluded the matter in favour of respondent No.2.

5. Now I may deal with the three submissions made by the learned counsel for the petitioner. So far as the first submission that the Tribunal had no jurisdiction is concerned, suffice it to say that the petitioner has not raised this objection before the Tribunal. The petitioner submitted to the jurisdiction of the Tribunal and he has taken chance before it to get decision in his favour. Only when the decision has been given against him by the Tribunal that the petitioner has questioned the same on the ground of lack of jurisdiction. It is settled law that this court while exercising powers under Article 226 of the Constitution of India may decline to interfere in the matter where it finds that the petitioner's conduct is of such nature which disentitles him from getting any relief. No explanation whatsoever

has been given why this objection has not been raised before the Tribunal. The petitioner should have raised this objection at the earliest before the Tribunal. In view of this fact this contention of the learned counsel for the petitioner deserves outright rejection. Otherwise also I fail to see any substance in this contention on merits.

6. The learned counsel for the petitioner has referred to the Schedule attached to the Gujarat Civil Services Appellate Tribunal Act and contended that appeal is not provided in the matter of seniority or promotion. Jurisdiction of the Tribunal has to be decided in service matters with reference to the Gujarat Panchayat Services (Discipline and Appeal) Rules. In the said Rules appeal has been provided against wrong assignment of seniority or promotion. In this case seniority has been assigned to the petitioner by the District Development Officer and promotion has also been given by the said authority. So in both matters appeal has to be filed to the Government. In service matters jurisdiction of the Government has now been given to the Tribunal. On merits otherwise also this contention is devoid of any substance.

7. the contention of the counsel for the petitioner that the appeal was time barred deserves to be rejected only on the ground that this point was not raised before the Tribunal. When the matter has been decided by the Tribunal on merits the petitioner cannot be permitted to raise this objection before this court. Moreover, if we proceed with the assumption that appeal was time barred the Tribunal has ample powers also to condone the delay. The Tribunal has given the finding in the judgment that respondent No.2 had no knowledge of publication of seniority list of agricultural assistants in which the name of the petitioner has been shown. Learned counsel for the petitioner does not dispute the position that the Tribunal has power to condone the delay in filing appeal. Last but not the least, it is not a pure question of law but a mixed question of law and facts and such a plea also cannot be allowed to be taken for the first time in a petition under Article 226/227 of the Constitution of India. On merits, as discussed above, the Tribunal has passed just and reasonable order which does not call for interference.

8. Where this court finds in a proceeding under Article 226/227 of the Constitution of India that substantial justice has been done between the parties, this court will not interfere with the order. Here is a case where I am of the opinion that the Tribunal has

passed just and reasonable order and substantial justice has been done to the parties. On this ground also no interference is called for by this Court sitting under Article 226/227 of the Constitution of India. In a case where it is noticed that posting of the petitioner back as Agricultural Assistant is an act of favoritism and where it is found that counting of service on the post of Agricultural Assistant since the date of his appointment and assignment of seniority and giving of promotion is illegal, this court, even if it finds that the Tribunal lacked jurisdiction or the appeal was time barred, will not interfere in the matter.

9. In the result this writ petition fails and the same is dismissed. Rule discharged. Ad interim relief granted by this Court stands vacated. No order as to costs.

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